

Internal Revenue Service

Number: **200716012**

Release Date: 4/20/2007

Index Number: 355.01-00; 368.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:B02

PLR-142584-06

Date:

January 11, 2007

Legend

Distributing =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

LLC 1 =

LLC 2 =

Controlled LLC =

Controlled =

Business X =

Market 1 =

Market 2 =

Individual Shareholder =

Partnership Shareholder =

a =

b =

<u>c</u>	=
<u>d</u>	=
<u>e</u>	=
<u>f</u>	=
<u>g</u>	=
<u>h</u>	=
<u>i</u>	=
State Y	=

Dear _____ :

This is in response to a letter dated August 28, 2006 requesting rulings as to the federal income tax consequences of a series of proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether each of the distributions as described below: (i) satisfies the business purpose requirement of Treas. Reg. section 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. section 1.355-2(d)); and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. section 1.355-7).

SUMMARY OF FACTS

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing is primarily a holding company. Distributing has outstanding two classes of common stock and one class of preferred stock. Individual Shareholder holds a percent of the outstanding Class A common stock, approximately b percent of the outstanding Class B common stock, and c percent of the outstanding preferred stock. Partnership Shareholder holds the remaining d percent of the Class A common stock and the remaining e percent of the Class B common stock. Prior to the proposed transactions described below, the dividend in arrears on the preferred stock will be declared and paid in cash to Individual Shareholder.

Distributing owns all of the outstanding stock of Sub 1, a holding company. Sub 1 owns all of the outstanding stock of Sub 2. Sub 2 is directly engaged in Business X in Market 1 and Market 2, and is also engaged, directly and indirectly through its subsidiaries, in Business X in other markets. Sub 2 owns all of the membership interests in Controlled LLC, a limited liability company, which is treated as a disregarded entity for federal income tax purposes. Controlled LLC is directly engaged in Business X in Market 2.

Distributing also owns f percent of the stock of Sub 3, all of the stock of Sub 4, g percent of the stock of Sub 5, and all of the membership interests in LLC 1 and LLC 2, each of which is treated as a disregarded entity for federal income tax purposes. LLC 2 owns all of the stock of Sub 6, Sub 7, Sub 8, and Sub 9. Prior to the proposed transactions described below, Distributing will contribute to Sub 6 all of the indebtedness owed to Distributing by Sub 6, and will contribute to Sub 7 all of the indebtedness owed to Distributing by Sub 7.

Financial information has been received indicating that Business X in Market 1 (as conducted directly by Sub 2) and Business X in Market 2 (as currently conducted directly by Sub 2 through Controlled LLC and that will be conducted directly by Controlled) each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTIONS

For what are represented to be valid business purposes, Distributing has proposed the following series of transactions (the "Proposed Transactions"):

(1) Sub 1 will convert from a corporation to a single member limited liability company which will be treated as a disregarded entity for federal income tax purposes. Distributing represents that the conversion of Sub 1 to a limited liability company will be treated for federal income tax purposes as a liquidation under section 332.

(2) Controlled LLC will convert from a limited liability company to a corporation (the "Conversion") under State Y law. The Conversion will be treated as a contribution by

Sub 2 of all of the assets of Controlled LLC to Controlled in exchange for all of the stock of Controlled and the assumption by Controlled of all of the liabilities associated with Controlled LLC. The authorized capital stock of Controlled will consist of one class of common stock which will be wholly owned by Sub 2.

(3) Sub 2 will distribute all of the stock of Controlled to Distributing (the "Internal Distribution").

(4) Distributing will contribute to Controlled (a) all of the stock that Distributing owns in Sub 3, Sub 4, and Sub 5, and (b) all of the membership interests that Distributing owns in LLC 1 and LLC 2 (which is treated as a contribution by Distributing of all of the assets of LLC1 and LLC2), in constructive exchange for additional shares of Controlled stock and the assumption by Controlled of all of the liabilities associated with LLC 1 and LLC 2 (collectively, the "Contribution").

(5) Distributing will distribute to its shareholders all of the stock of Controlled in exchange for Distributing common and preferred stock (the "External Distribution"). In the exchange: (a) Individual Shareholder will surrender all of the Distributing preferred stock for an amount of Controlled stock equal in value to the value of the Distributing preferred stock surrendered; (b) Individual Shareholder and Partnership Shareholder will surrender on a pro rata basis, a number of shares of Distributing Class B common stock that have a value approximately equal to the value of the shares of Controlled stock received in exchange therefor. The precise number of shares of Controlled stock to be exchanged for the Distributing preferred stock and the Distributing Class B common stock will be based upon independent third-party appraisals of the value of the shares of Distributing Class B common stock and Controlled stock.

Following the External Distribution, Distributing will establish a \$h line of credit for Controlled in order for Controlled to establish independent banking relationships. The line of credit will bear a market rate of interest and will contain commercially reasonable terms comparable to arm's-length terms negotiated in the open market. The line of credit will last no longer than i months.

REPRESENTATIONS

Internal Distribution

Distributing has made the following representations with respect to the Conversion and the Internal Distribution:

(a) The indebtedness owed by Controlled to Sub 2 after the Internal Distribution, if any, will not constitute stock or securities.

(b) No part of the consideration to be distributed by Sub 2 will be received by Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Sub 2.

(c) The Internal Distribution is not pursuant to a transaction described in the transition rule of section 355(b)(3)(C).

(d) The five years of financial information submitted with respect to Business X conducted by Sub 2 in Market 1 is representative of the present operation of Business X in Market 1, and there have been no substantial operational changes since the date of the last financial statements submitted.

(e) The five years of financial information submitted with respect to Business X conducted by Controlled LLC (and to be conducted by Controlled) in Market 2 is representative of the present operation of Business X in Market 2, and there have been no substantial operational changes since the date of the last financial statements submitted.

(f) Following the Internal Distribution, Sub 2 and Controlled will each continue the active conduct of its respective business, independently and with its separate employees.

(g) The Internal Distribution is being carried out for the corporate business purpose of facilitating the External Distribution. The Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(h) The Internal Distribution is not used principally as a device for the distribution of the earnings and profits of Sub 2 or Controlled, or both.

(i) The total adjusted bases and the fair market value of the assets transferred to Controlled by Sub 2 in the Conversion each equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.

(j) The liabilities assumed by Controlled in the Conversion and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(k) Sub 2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Internal Distribution.

(l) Other than accounts payable incurred in the ordinary course of business, no intercorporate debt will exist between Sub 2 and Controlled at the time of, or subsequent to, the Internal Distribution.

(m) Immediately before the Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. section 1.1502-13 and Treas. Reg. section 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect, Treas. Reg. section 1.1502-13 as published by T.D. 8597.) At the time of the Internal Distribution, Sub 2 will not have an excess loss account in the stock of Controlled.

(n) The allocation of basis under section 358 that will occur in connection with the Internal Distribution will not result in the Controlled stock having a higher basis than it had immediately before the Internal Distribution.

(o) Payments made in connection with all continuing transactions, if any, between Sub 2 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(p) No two parties to the transaction are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

(q) The Internal Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. section 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Sub 2 or Controlled (including any predecessor or successor of such corporation).

(r) For purposes of section 355(d), immediately after the Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Sub 2 stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Sub 2 stock, that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution).

(s) For purposes of section 355(d), immediately after the Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that was either: (1) acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution; or (2) attributable to distributions on Sub 2 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution.

(t) Neither Sub 2 nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)) immediately after the Internal Distribution.

Contribution and External Distribution

Distributing has made the following representations with respect to the Contribution and the External Distribution:

(aa) The indebtedness owed by Controlled to Distributing after the External Distribution, if any, will be on commercially reasonable terms and will not constitute stock or securities.

(bb) The fair market value of the stock of Controlled to be received by each of Individual Shareholder and Partnership Shareholder in the External Distribution will be approximately equal to the aggregate fair market value of the Distributing Class B common stock and Distributing preferred stock surrendered by each such shareholder in exchange.

(cc) No part of the consideration to be distributed by Distributing will be received by Individual Shareholder and Partnership Shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(dd) The External Distribution is not pursuant to a transaction described in the transition rule of section 355(b)(3)(C).

(ee) Distributing will treat all members of its respective separate affiliated group (as defined in section 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.

(ff) Sub 2 will be a member of Distributing's separate affiliated group (as defined in section 355(b)(3)(B)).

(gg) The five years of financial information submitted with respect to Business X conducted by Sub 2 (a member of the Distributing separate affiliated group) in Market 1 is representative of the present operation of Business X in Market 1, and there have been no substantial operational changes since the date of the last financial statements submitted.

(hh) The five years of financial information submitted with respect to Business X conducted by Controlled LLC (and to be conducted by Controlled) in Market 2 is representative of the present operation of Business X in Market 2, and there have been no substantial operational changes since the date of the last financial statements submitted.

(ii) Following the External Distribution, the Distributing separate affiliated group and Controlled will each continue the active conduct of its respective business, independently and with its separate employees.

(jj) The External Distribution is being carried out for the following corporate business purposes:

i. To enhance the success of Distributing and Controlled by enabling them to resolve management and systemic problems that arise by the operation of their businesses within a single affiliated group;

ii. To permit Distributing and Controlled to adopt strategies and pursue objectives that are appropriate to each respective entity, recognizing that the subsidiaries contributed to Controlled have substantially different financial, investment, and operating characteristics, return profiles, and growth potentials compared to Distributing's remaining activities. Further, by placing Controlled, a corporation with a significant positive cash flow, in the same group with these subsidiaries, it is anticipated that additional cash flow will be generated to help satisfy the cash needs of all entities; and

iii. To obtain cost savings through access to capital to fund Distributing's operations, capital expenditures, acquisitions, and other business needs at a lower cost.

The External Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(kk) The External Distribution is not used principally as a device for the distribution of the earnings and profits of either Distributing or Controlled, or both.

(ll) The total adjusted bases and the fair market values of the assets transferred to Controlled by Distributing in the Contribution each equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.

(mm) The liabilities assumed by Controlled in the Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(nn) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the External Distribution.

(oo) Other than accounts payable incurred in the ordinary course of business, and except as to the line of credit described above, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the External Distribution.

(pp) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. section 1.1502-13 and Treas. Reg. section 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect, Treas. Reg. section 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled stock (or the excess loss account that a member may have in the stock of another member that is required to be taken into account by Treas. Reg. section 1.1502-19) will be included in income immediately before the External Distribution (see Treas. Reg. section 1.1502-19).

(qq) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(rr) No two parties to the transaction are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

(ss) The External Distribution is not part of a plan or series of related transactions (within the meaning of section Treas. Reg. 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of such corporation).

(tt) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.

(uu) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that was either: (1) acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution; or (2) attributable to distributions on Distributing stock that was acquired by purchase (as defined in

sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.

(vv) Neither Distributing nor Controlled will be a disqualified investment company (within the meaning of section 355(g)(2)) immediately after the External Distribution.

(ww) Immediately prior to the Contribution and External Distribution, Distributing will not have an excess loss account in the stock of any of Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, or Sub 9.

RULINGS

Internal Distribution

Based solely on the information submitted and the representations made, we rule as follows:

(1) The Conversion and the Internal Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Sub 2 and Controlled each will be “a party to the reorganization” within the meaning of section 368(b).

(2) No gain or loss will be recognized by Sub 2 on the Conversion. Sections 361(a) and 357(a).

(3) No gain or loss will be recognized by Controlled on the Conversion. Section 1032(a).

(4) Controlled’s basis in each asset received from Sub 2 in the Conversion will equal the basis of that asset in the hands of Sub 2 immediately before the Conversion. Section 362(b).

(5) Controlled’s holding period for each asset received from Sub 2 in the Conversion will include the holding period during which Sub 2 held that asset. Section 1223(2).

(6) No gain or loss will be recognized by Sub 2 on the Internal Distribution. Section 361(c).

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing upon the receipt of Controlled stock in the Internal Distribution. Section 355(a)(1).

(8) The aggregate basis of the Sub 2 stock and Controlled stock in the hands of Distributing immediately after the Internal Distribution will equal the aggregate basis of the Sub 2 stock held by Distributing immediately before the Internal Distribution,

allocated between the stock of Sub 2 and Controlled in proportion to the fair market value of each in accordance with Treas. Reg. section 1.358-2(a)(2). Sections 358(a)(1), (b), and (c).

(9) The holding period of the Controlled stock received by Distributing in the Internal Distribution will include the holding period of the Sub 2 stock with respect to which the Internal Distribution is made, provided that such Sub 2 stock was held as a capital asset on the date of the Internal Distribution. Section 1223(1).

(10) Earnings and profits will be allocated between Sub 2 and Controlled in accordance with section 312(h), and Treas. Reg. sections 1.312-10(a) and 1.1502-33(f)(2).

Contribution and External Distribution

(11) The Contribution and the External Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be “a party to the reorganization” within the meaning of section 368(b).

(12) No gain or loss will be recognized by Distributing on the Contribution. Sections 361(a) and 357(a).

(13) The basis of the Controlled stock in the hands of Distributing (as determined in ruling (8) above) will be increased by the basis of the property contributed by Distributing to Controlled in the Contribution and decreased by the amount of liabilities assumed by Controlled in the Contribution. Sections 358(a)(1) and (d).

(14) No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).

(15) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution. Section 362(b).

(16) Controlled’s holding period for each asset received from Distributing in the Contribution will include the holding period during which Distributing held that asset. Section 1223(2).

(17) No gain or loss will be recognized by Distributing on the External Distribution. Section 361(c).

(18) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing upon the receipt of Controlled stock in exchange for Distributing Class B common stock and Distributing preferred stock surrendered in the External Distribution. Section 355(a)(1).

(19) The basis of the Controlled stock in the hands of the shareholders of Distributing immediately after the External Distribution will be the same as the basis of the Distributing Class B common stock and Distributing preferred stock that each such shareholder surrendered in exchange therefor, allocated in accordance with Treas. Reg. section 1.358-2(a)(2). Sections 358(a)(1) and (b).

(20) The holding period of the Controlled stock received by the shareholders of Distributing will include the holding period of the Distributing Class B common stock and Distributing preferred stock surrendered in exchange therefor, provided that such Distributing stock was held as a capital asset on the date of the External Distribution. Section 1223(1).

(21) Distributing's earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. section 1.312-10(a). Distributing and Controlled will adjust their earnings and profits in accordance with Treas. Reg. sections 1.1502-33(e) and (f)(2).

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

(i) Whether each of the Internal Distribution and the External Distribution satisfies the business purpose requirement of Treas. Reg. section 1.355-2(b);

(ii) Whether each of the Internal Distribution and the External Distribution is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. section 1.355-2(d));

(iii) Whether each of the Internal Distribution and the External Distribution, and an acquisition or acquisitions, are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii);

(iv) The federal tax treatment of the conversion of Sub 1 from a corporation to a limited liability company; and

(v) The federal tax treatment of the contribution by Distributing of the Sub 6 and Sub 7 indebtedness to Sub 6 and Sub 7, respectively.

PROCEDURAL MATTERS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Frances Kelly
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Corporate)